Supreme Court, U.S.
FILED

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No. _____

In The

Supreme Court of the United States

October Term, 1994

BOBBY GAY BEAZLEY,

Petitioner,

vs.

STATE BAR OF GEORGIA,
(ASSOCIATION),

Respondent.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

PRESENTED BY: Bobby G. Beazley,
Pro Se
P. O. Box 820
Harlem, Georgia 30814
1-706-556-9627

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

I. Did the United States Court Of Appeals for the Eleventh Circuit depart from the accepted and usual course of judicial proceedings or sanction such a departure by the United States District Court, Augusta, Division, in allowing said district court to ignore a valid motion to recuse, refuse to hear any merits, and place petitioner in jail until he signed a dismissal dismissing a merited complaint against the respondent in the Columbia County, Georgia Superior Court so as to call for an exercise of the supervisory powers of the United States Supreme Court?

II. Did the Eleventh Circuit Court Of Appeals decide a federal question in a way that conflicts with applicable decisions of the United States Supreme Court when it sanctioned the departure by the United States District Court, Augusta, Georgia Division from precedent of the Supreme Court establishing what is required to sustain a contempt motion?

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OPINIONS BELOW

The opinion of the Eleventh Circuit Court Of Appeals For The Eleventh Circuit is included as Appendix A; The order of the United States District Court dated March 3, 1994 is included as Appendix B; the order of the district court dated March 4, 1993 is included as Appendix C; the order of the Richmond County Superior Court dated June 26, 1978 is included as Appendix D; and the order of the Richmond County, Georgia Superior Court dated May 28, 1986 is included as Appendix E.

JURISDICTION

The final decision of the Eleventh Circuit Court Of Appeals For The Eleventh Circuit was entered on January 18, 1995. The jurisdiction of the United States Supreme Court is invoked per *28 U.S.C. § 1254 (1)* and is timely.

CONSTITUTIONAL AND STATUTORY PROVISIONS

A. Amendment XIV, U. S. C. which states in pertinent part: ". . . . nor shall any state deprive any person of life, liberty, and property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the law."

B. 28 U.S.C. § 144: "Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against

him or in favor of any adverse party, such judge *shall* (word of command) proceed no further therein."

C. 28 U.S.C. § 455 (a): "the test is whether an objective disinterested, lay observer fully informed of the facts on which recusal was sought would entertain a significant doubt about the judge's impartiality."

STATEMENT OF THE CASE

On June 22, 1978, petitioner forwarded a report to respondent as a ploy to gain inquiry from respondent concerning matters that petitioner had discovered were/are proving hurtful to the profession. See Appendix F. At that time, one could not resign his membership in the respondent and if one attempted a resignation, it resulted in an investigation. Years later, a strict procedure filled with due process protections was adopted by the respondent and approved by the Georgia Supreme Court.

Upon receiving petitioner's petition, agents of the respondent prepared a petition to have petitioner removed as a member of the respondent and forwarded same to a Superior Court judge in Augusta, Georgia. Prior to respondent mailing the petition, petitioner talked to the respondent's agents via the phone and told them it was an effort to gain an investigation. The phone was slammed down in petitioner's face and respondents agents disregarded the fact that petitioner told them that the report was not under oath and did not bear his signature. An order was entered on June 26, 1978 removing petitioner as a member of the respondent. As a point of law, the order was not entered as there was no viable

legal proceeding to enter it on. See Appendix F. No notice, service, etc. was given to petitioner prior to entry of the illegal removal order. The order bore no case number which meant that under Georgia law, it never became a legal proceeding and was a nullity. See Appendix F. Later an out of town judge over turned the order but this order was invalid also and bore no case number. Nevertheless, this was ignored by the respondent and the judges who made up the jurist team for the Augusta, Georgia Judicial Circuit. Further, the Clerks of the various counties making up the Augusta Judicial Circuit were instructed not to accept any filings or pleadings from petitioner as he was out. Threats and shooting out windows followed and petitioner fled Augusta, Georgia and sought refuge in South Georgia with former clients.

The respondent appealed the order setting the nullity order of removal aside; however, there was nothing to appeal since neither it or the removal order bore a case number and represented no legal proceeding. Nevertheless, petitioner was hauled before the Emory University student body for a hearing by the Supreme Court of Georgia where every attempt was made to belittle and ridicule petitioner. After the hearing, Emory students swarmed about to wish petitioner luck. The Supreme Court of Georgia later issued a bogus decision in a vain attempt to breathe life into the nullity removal order. Based on this decision, the respondent, certain judges and lawyers, turned up the heat on petitioner not once realizing that petitioner's sole objective all along had been to warn and mobilize the profession.

Respondent thereafter took the position that petitioner was out as a lawyer and there existed no method of

reinstatement for him. Petitioner filed a complaint in the Columbia County Georgia Superior Court seeking to have respondent restore his name to the active list or advise of a procedure to utilize to have his name restored. Respondent offered weird suggestions as to methods for petitioners name to be restored; whereupon, petitioner said that he would go along if the Supreme Court of Georgia approved same. To this suggestion, there was no response.

Respondent filed a motion per *18 U.S.C. § 401* in the district court seeking to have petitioner held in contempt because he had filed a complaint in the Columbia County Superior Court. The district court had earlier ordered petitioner not to file any more complaints against the Respondent *"with respect to claims and issues"* resolved by an earlier order of the district court entered on 9-6-89. The claims and issues were never identified and have not been as of this writing.

In any event, petitioner's new complaint in the Columbia County Superior Court did not involve any claims or issues supposedly resolved by an earlier order of the district court.

Petitioner filed a timely motion to recuse the presiding judge of the district court. See Appendix C. The motion to recuse was sufficient and timely. The district judge denied petitioner's motion to recuse. See Appendix B. No new judge was called in to hear petitioners motion to recuse. The district judge had for years opposed petitioner's efforts to warn the profession of a clear and present danger disclosed by countless publications located in the public libraries of the United States.

On March 4, 1994, the district judge held a hearing to determine whether or not petitioner was in contempt for filing a complaint against respondent in the Columbia County, Georgia Superior Court. (T 1 – 24). At the hearing, the district judge refused to hear the merits or hear from witnesses and proceeded to expand his earlier Order to mean that he meant that petitioner was not to file a complaint of any kind against the respondent. (T 22, 13, 21). The district judge then ordered petitioner confined to jail until he dismissed his complaint against the respondent in the Columbia County, Georgia Superior Court and leveled $2,000.00 in legal costs against petitioner without any showing of how many hours had been spent by respondent working the case and working on what. See Appendix D.

REASONS FOR GRANTING WRIT

A. Petitioners writ should be granted because *28 U.S.C. § 144* states that the district judge should have *proceeded no further* when the motion to recuse was filed. See Appendix C.

In the decision prompting this petition, the Eleventh Circuit Court Of Appeals Panel made a vain attempt to do some Monday morning quarterbacking for the district judge on the issue of timeliness of the motion to recuse; however, this issue was not raised below by respondent. On top of that, the motion to recuse the district judge was timely and sufficient. See Appendix C. Therefore, it became inescapably clear that the Eleventh Circuit Panel departed from the accepted and usual course of judicial

proceedings and sanctioned such a departure by the district judge.

B. Petitioner's writ should be granted because the text of the affidavit filed in support of petitioners motion to recuse disclosed clear prejudice and bias and this was not refuted by the district judge. See *28 U.S.C. § 455*. The district judge decided himself that he was not prejudice when it is axiomatic that the facts in the affidavit are assumed as true in such a situation. See Appendix B. The district judge wrote on Page 3 of his order: *"My only exposure to Beazley . . . is professional."* This was a blatant falsehood. The district judge has known petitioner for years and has been aligned with those persons in Augusta, Georgia who had both threatened petitioner and vowed to make an example out of him.

Petitioner's writ should be granted because it was not shown in the district court why petitioner was in contempt and the Eleventh Circuit Panel side stepped this issue. The Panel wrote in its January 18, 1995 decision that petitioner was enjoined from initiating any further litigation concerning his reinstatement. See Appendix A, Page 2. However, this same court issued an order on April 2, 1990 that stated that petitioner was enjoined from filing further lawsuits against respondent with respect to claims and issues that were resolved by order of September 6, 1989. Petitioner argued before the district court that it would first have to decide what claims and issues its September 6, 1989 order resolved and then look to the new complaint to see if any had been represented. (T – 13.). The district judge declined to go into the merits of respondent's motion to hold petitioner in contempt and declined to hear from witnesses and further declined to

allow petitioner to cross-examine respondent's representative. (T – 13, 8). The record remained silent on the critical issue of just what petitioner was in contempt for. (T – 1, 24). This was not only a departure from the accepted and usual course of judicial proceedings but further raises serious questions concerning the district judge's competency and knowledge of the law plus confessing that a major cover up is/has been underway for sometime. Thus the Eleventh Circuit Panel in its January 18, 1995 decision decided this issue in a way that conflicted with a decision of this court (United States Supreme Court) which stated that: "a decree will not be expanded by implication or intendment beyond the meaning of its terms and the facts *must* (word of command) constitute a plain violation of the decree so read". See *Terminal r. Ass'n v. U. S. Mo. 1924, 45 S. Ct. 5, 266 U. S. 17, 69 L.Ed. 150.*

Below, the only fact established was that petitioner had filed a complaint against respondent. (T 1 – 24).

CONCLUSION

The State of Georgia through its agents (Jurist) have clearly under color of State law violated petitioner's rights under Amendment XIV, U. S. C., with the United States District Court, Augusta Division, joining in a joint venture with the State Jurist to continue to openly violate these rights; moreover, the Eleventh Circuit Court Of Appeals has sanctioned this abuse by the district court and ignored decisions of this court involving "due process" and Amendment XIV, U.S.C., so that it is now time

for this court to exercise its supervisory powers to correct the situation by over turning the complained about decision holding petitioner in contempt and ordering him to pay legal fees and costs when he is the one in the right; moreover, it is petitioner's belief that this the highest court in the land needed to be noticed of the factual situation presented as the real loser thus far has been the United States Constitution.

Respectfully submitted, this the 14th day of April, 1995.

BOBBY GAY BEAZLEY, Pro Se

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[DO NOT PUBLISH]

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 94-8358
Non-Argument Calendar

D.C. Docket No. CV189-029

BOBBY GAY BEAZLEY,

Plaintiff-Appellant,

versus

STATE BAR OF GEORGIA,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Georgia

(Filed Jan. 18, 1995)

Before BIRCH, BLACK and CARNES, Circuit Judges.

PER CURIAM:

Bobby Gay Beazley voluntarily resigned from the Georgia State Bar in 1978. Days after the bar association accepted his resignation, Beazley began his crusade for reinstatement – a crusade which has spanned more than fifteen years, six law suits, and one other contempt order. This case arose after Beazley brought suit in Georgia state court in violation of a 1989 federal district court order which had enjoined Beazley from initiating any further

litigation on the issue of his reinstatement. The Georgia State Bar, the target of Beazley's perennial litigiousness, filed a motion for contempt in the district court; Beazley countered by filing a motion to recuse the district judge and a motion to deny the plaintiff's motion for contempt. The district court denied Beazley's motions, granted the State Bar's motion for contempt, and ordered Beazley to pay the State Bar $2,000 for its legal expenses. Beazley now appeals the denial of his motion to recuse the district judge, and the court's judgement of contempt.

Beazley asserts two factual bases for requiring recusal of the district judge: that the judge is biased due to his membership in the Georgia State Bar; and that the judge is personally biased against Beazley. This Court reviews the district court's denial of a recusal motion for abuse of discretion. *Loranger v. Stierheim*, 10 F.3d 776, 779 (11th Cir. 1994).

Beazley's argument regarding the first basis, that the district judge was required by 28 U.S.C. § 144 to recuse himself because of his membership in the Georgia State Bar, is without merit.[1] We have held that, in a suit involving a state bar association, a judge's mere membership in that association is not a ground for requiring disqualification. *Parrish v. Board of Commissioners of Alabama State Bar*, 524 F.2d 98, 104 (5th Cir. 1975), *cert. denied*, 425 U.S. 944,

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[1] Section 144 provides in pertinent part: "Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein. . . . " 28 U.S.C. § 144.

96 S. Ct. 1685 (1976). We need not address Beazley's argument regarding the second factual basis for recusal because he has failed to abide by the requirements for filing a section 144 affidavit. Section 144 requires that the affidavit alleging bias or prejudice be timely filed and that it be "accompanied by a certificate of counsel of record stating that it is made in good faith." 28 U.S.C. § 144 (1993); *See also United States v. State of Alabama*, 828 F.2d 1532, 1540 (11th Cir. 1987); *Hamm v. Members of Bd. of Regents of State of Florida*, 708 F.2d 647, 651 (11th Cir. 1983), *cert. denied*, 487 U.S. 1210, 108 S. Ct. 2857 (1988). Beazley did not file a certificate of good faith and his motion for recusal was not timely.

Beazley's appearances before this district Judge began in 1989, prior to the entry of the injunction on which this contempt order is based. Beazley did not make a motion for recusal when he first appeared before this judge, even though the comments that Beazley contend establish bias had allegedly been made more than a decade before that time. **[R3:69:3]** Beazley did, however, make a motion to recuse the magistrate judge in the 1989 suit **[R2:16]**, a motion which was withdrawn by Beazley after the magistrate judge had already entered an order denying the motion. **[R2:24 & 34]** In addition, Beazley appeared before this same district judge again in 1991, and once again made no recusal motion against the judge. More than five years have passed since Beazley's case was first assigned to this judge; the time for making a recusal motion has long passed. *E.g., Yates v. Manale*, 377 F.2d 888 (5th Cir. 1967), *cert. denied*, 39 U.S. 943, 88 S. Ct. 1037 (1968).

Our review does not end there, however, because a judge has a continuing duty under 28 U.S.C. § 455 to independently evaluate his impartiality, *see, e.g., Parrish*, 524 F.2d at 103 n.8, regardless of how he is made aware that his recusal might be appropriate. *See Phillips v. Joint Legislative Comm. on Performance and Expenditure Review of State of Miss.*, 637 F.2d 1014, 1019 n.6 (5th Cir. 1981), *cert. denied*, 456 U.S. 960, 102 S. Ct. 2035 (1982). The self-executing provisions of seciton [sic] 455 require that a judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455(a).

> The test under section 455(a) is whether an objective, disinterested, lay observer fully informed of the facts on which recusal was sought would entertain a significant doubt about the judge's impartiality. However, we have held that a judge's bias must be personal and extrajudicial; it must derive from something other than that which the judge learned by participating in the case.

United States v. Chandler, 996 F.2d 1073, 1104 (11th Cir. 1993) (citations and internal quotation marks omitted), *cert. denied*, 114 S. Ct. 2724 (1994).

Having reviewed all of the allegations of bias made in this case, we do not think that the district judge abused his discretion in finding that a reasonable person would not have questioned his impartiality. As such, the district judge was correct in denying Beazley's motion for recusal. In addition, Beazley has failed to present any argument to demonstrate that the district court abused its

discretion in finding him to be in contempt and in imposing the $2,000 fine to compensate the Georgia State Bar for its expenses.[2] Therefore, the district court's contempt order is due to be affirmed.

As a final matter, because we find that this appeal contains wholly frivolous claims and lacks all semblance of proper legal argument, we conclude that it was brought in bad faith and therefore impose sanctions on Beazley in the amount of double the costs of this appeal plus reasonable attorneys' fees to Appellee. *See* Fed. R. App. P. 38 & 28 U.S.C. §§ 1912; *see also Bonfiglio v. Nugent*, 986 F.2d 1391, 1394 (11th Cir. 1993); *Geaneas v. Willits*, 911 F.2d 579, 582 (11th Cir. 1990), *cert. denied*, 499 U.S. 955, 111 S. Ct. 1431 (1991). Rather than calucate [sic] those costs and fees ourselves, we remand this case to the district court with instructions for it to calculate and assess the attorneys' fees and costs in connection with this appeal, and to order Beazley to pay that amount. *See Bonfiglio*, 986 F.2d at 1394-95; *Collins v. Amoco Production Co.*, 706 F.2d 1114, 1115 (11th Cir. 1983).

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[2] Beazley raises a number of issues by posing a question, such as, "Was the dismissal of the Columbia County suit an involuntary act accompanied by duress?" **[Appellant's Br. at 3]** His argument section then purports to analyze this issue with the following: "The answer is yes. No citation of authority being necessary." **[*Id.* at 10]** The vast bulk of Beazley's "issues" are "argued" in this summary and unsubstantiated fashion. As a former attorney, Beazley cannot plead ignorance of the requirements for presenting an appropriate appellate argument. We reject all of Beazley's claims presented in this manner, because no factual or legal substantiation is offered for them.

We AFFIRM the district court's contempt order, TAX DOUBLE COSTS against Appellant, GRANT Appellee's motion for attorneys' fees, and REMAND the case to the district court for assessment of those fees and costs and entry of an appropriate order.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

BOBBY G. BEAZLEY, Movant,	*	No. CV 189-029
vs.	*	
STATE BAR OF GEORGIA, Respondent.	*	

ORDER

(Filed March 3, 1994)

Before the Court is Bobby G. Beazley's ("Beazley") Motion to Set Aside and/or Stay the Court's February 18, 1994, Order denying Beazley's Motion to Disqualify Judge Dudley H. Bowen, Jr., from presiding over this matter.

Disqualification of judges is covered by 28 U.S.C. § 144 and 28 U.S.C. § 455: the former applies when a party requests disqualification and the latter identifies those situations when a judge must recuse himself. Section 144 provides that "[w]henever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein. . . . " § 144. When considering a § 144 affidavit, its allegations must be accepted as true

and the issue is whether its facts and reasons " 'would convince a reasonable man that a bias exists.' " *United States v. Story*, 716 F.2d 1088, 1090 (6th Cir. 1983) (quoting *Berger v. United States*, 255 U.S. 22, 33 (1921)).

Under § 455, a judge must disqualify himself if "his impartiality might reasonably be questioned." § 455(a), he has a personal bias, or he has a personal connection with the case, § 455(b) (specifying circumstances deemed personal connection). The standard for § 455 is whether a "reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned." *Story*, 716 F.2d at 1091 (quoting *Trotter v. International Longshoreman's & Warehouseman's Union*, 704 F.2d 1141, 1144 (9th Cir. 1983)). Also, § 455 disqualification generally may not be based on rulings in the case before the court or related cases, on a demonstrated tendency to rule any particular way, or a judge's particular leaning or attitude derived from his experience on the bench. *Huff v. Standard Life Ins. Co.*, 683 F.2d 1363, 1369 (11th Cir. 1982).

Disqualification under §§ 144 and 455 must be based on extrajudicial conduct rather than judicial conduct.[1] *Story*, 716 F.2d at 1090-91. As a general rule, a judge's rulings in the same or a related case may not serve as the basis for a disqualification motion, *McWhorter v. City of Birmingham*, 906 F.2d 674, 678 (11th Cir. 1990), *reh'g denied*, 917 F.2d 570 (11th Cir. 1990) (quoting *Jaffe v. Grant*, 793 F.2d 1182, 1189 (11th Cir. 1986), *cert. denied*, 480 U.S. 931

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[1] Sections 144 and 455 must be construed together. *United States v. Story*, 716 F.2d 1088, 1091 (6th Cir. 1983).

(1987)). There is an exception to the general rule when the movant demonstrates "pervasive bias and prejudice" *id.* Thus, a movant must show pervasive bias and prejudice that is personal in nature. Personal bias arises from extra-judicial sources and is based on something other than that which the judge learned from his participation in the case. *United States v. Sinclair,* 424 F. Supp. 715, 718 (D. Del. 1976); *see also McWhorter,* 906 F.2d at 678. Finally, personal bias also may arise from a judge's attitude towards a litigant if it is significantly different from and more particularized than the normal, general feelings of society at large against convicted wrongdoers. *Sinclair,* 424 F. Supp. at 718.

My only exposure to Beazley or to this litigation is professional. Apart from my natural compassion, I possess no personal bias regarding this case. Beazley's Motion and accompanying affidavit indicate no basis for my disqualification in this matter. Beazley's Motion is DENIED. The hearing previously rescheduled for March 4, 1994, at 11:00 a.m., in Courtroom 1, 985 Broad Street, Augusta, Georgia, shall proceed as scheduled.

ORDER ENTERED at Augusta, Georgia, this 3rd day of March, 1994.

/s/ Dudley H. Bowen, Jr.
UNITED STATES
DISTRICT JUDGE

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

BOBBY G. BEAZLEY, Plaintiff, -Vs.- STATE BAR OF GEORGIA, Defendant.	*	CIVIL ACTION FILE NUMBER CV-189-029 MOTION TO RECUSE (Filed Jan. 31, 1994)

COMES NOW, Bobby Gay Beazley, who is the plaintiff in the above entitled case, or respondant [sic] herein, and files this his motion to recuse the Honorable Dudley H. Bowen from presiding in said case and respectfully shows the following, to-wit:

-1-

That plaintiff-movant's required affidavit is attached hereto and labeled, "Exhibit A".

-2-

That *28 U.S.C. s. 144, 145* state basically:

(a) Judges should respect and comply with the law and should conduct themselves at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

(b) . . . Judges should not lend the prestige of their office to advance the private interest of others.

(c) Judges should disqualify themselves in proceedings in which their impartiality might reasonably questioned, including but not limited to instances where: "the judge has a personal bias or prejudice concerning a party."

WHEREFORE, movant-plaintiff prays that his motion to recuse be granted and that a judge who is a non member of the respondant [sic] association be designated to hear said motion.

/s/ Bobby G. Beasley

Bobby G. Beazley, Esq.
P. O. Box 204354
Martinez, Georgia 30917
1-706-6966

STATE OF GEORGIA

COUNTY OF RICHMOND

AFFIDAVIT

COMES NOW, Bobby G. Beazley before the undersigned attesting officer, who is authorized to administer oaths, and who after being duly sworn, deposes and states that the following facts are true and correct and are made from the affiant's own personal knowledge, to-wit:

1 - That subsequent to the hotly contested district attorney race in the Augusta Judicial Circuit, which affiant was involved, Jurist Bowen stated to affiant that he had made a significant contribution to the community but

that now that it was over, affiant should make plans to depart the county.

2 - That almost two years later, Jurist Bowen told affiant in the Richmond County Courthouse that he was making to [sic] many waves by representing the Richmond County Property Owners Association – a good government group – and that he should consider ceasing such activity.

3 - Still later and around 4 years after the 1972 district attorney race, Jurist Bowen told affiant flatly to his face that he just did not like him.

4 - That the late Honorable Thomas W. Ridgway, deceased, laid all the law down by order of May 28, 1986 and ordered affiant restored to the active list; however, this order was reversed on an illegal appeal by the respondant [sic] association. This reversal was pure dictum as the Ridgway Court was the only court that had jurisdiction to set aside the nullity removal order. The nullity removal order came off a paper that had no case number and showed no service on affiant. Georgia law is clear that until a case is served, it is not filed. These elementary points of law lead to the inescapable conclusion that Jurist Bowen has by issuance of his September 6, 1989 order allowed the respondant [sic] association to use his court to practice a fraud on the United States of America, the people of Georgia, and the whole membership of the State Bar of Georgia and fully intends to do so again.

5 - That Jurist Ridgway's order is attached as an exhibit to defendant's motion for contempt.

6 - That Jurist Bowen repeatedly stated in his order of 1989 that affiant had raised issues in prior proceedings. It is shown that raised is right; however, they were never ruled on. Only the Ridgway Court held a hearing and received evidence. All other courts passed it on saying that they had no jurisdiction. This is elementary law. Jurist Bowen's actions raised the possibility of a conspiracy between this Jurist and the defendant [sic] association to use this court in an attempt to cover up 15 years of wrongdoing by various members of the defendant [sic] association.

7 - That jurist Bowen is a member of the defendant [sic] association.

8 - That affiant sometime ago through his reading and historical studies stumbled on information pertinent to to the national security of the United States of America; moreover, affiant has forwarded this information onto what he perceives as the appropriate authority within the government to receive same. Furthermore, association member Robert L. Goldstucker in answers to plaintiff's interrogatories in the Brunswick case wrote: "Perhaps Mr. Beazley thought that his so called report might arouse the legal profession to protect the United States."

9 - That affiant is absoultely [sic] loyal to the United States Government; however, the past actions of association member Robert L. Goldstucker and Jurist Bowen raises serious questions concerning their loyalty to the truth and intentions to accord affiant a fair hearing.

10 - That the wall is down, the world is changing, and the cat is out of the bag on the national level; moreover, further crusification [sic] of affiant only serves notice that

the defendant Association has chose to go backward and not fall into step in the march forward to restore the American way.

This the 27th day of January, 1994.

/s/ Bobby Gay Beazley
Bobby Gay Beazley, Affiant

Sworn to and subscribed to this the
27th day of January, 1994.

/s/ Vicki B. Evans
Notary Public
11-11-95

[SEAL]

APPENDIX D

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

BOBBY G. BEAZLEY	*	No. CV 189-029
	*	
vs.	*	
	*	
STATE BAR OF GEORGIA.	*	

ORDER

(Filed March 4, 1994)

Before the Court is the Motion of the State Bar of Georgia ("Bar") for Contempt against Bobby G. Beazley ("Beazley") in the above-captioned case. Also before the Court is Beazley's Motion to Quash, Motion to Set Aside/Stay, Motion to Deny Motion, and Amended Motion to Deny Motion. As stated in the hearing on this matter held March 4, 1994, the findings and conclusions of which are incorporated herein by reference, Beazley's motions are DENIED. The Bar's Motion is GRANTED.

Beazley is in contempt of this Court, and he is committed to the custody of the United States Marshals Service. He shall be held in confinement until such time as he obtains the dismissal of Civil Action No. 93-480 filed by Beazley in the Superior Court of Columbia County in October of 1993, but his period of confinement shall not be less than seven (7) days.

It is further ordered that Beazley shall pay the sum of two thousand dollars ($2,000.00) to the State Bar of Georgia to compensate it for its expenses and fees incurred in defending the Columbia County lawsuit and in bringing the present Motion for Contempt.

ORDER ENTERED at Augusta, Georgia, this 4th day of March, 1994.

/s/ Dudley H. Bowen, Jr.
UNITED STATES
DISTRICT JUDGE

APPENDIX E

SUPERIOR COURT **CLERK'S OFFICE**

RICHMOND COUNTY **CASE NO.**91-RCCV-66

I, Helen L. Waldron, Deputy Clerk of the Superior Court of Richmond County, Georgia, hereby certify that the foregoing is a true copy of the original file and of record in this office in Re: BOBBY GAY BEAZLEY VS. STATE BAR OF GEORGIA COMPLAINT ETC

Witness my signature and the seal of said court hereto affixed at Augusta, Georgia, this 6th day of January 1994.

/s/ Helen L. Waldron
DEPUTY CLERK

[SEAL]

APPENDIX F

IN THE SUPERIOR COURT OF RICHMOND COUNTY
STATE OF GEORGIA
DISCIPLINARY PROCEEDINGS
FROM THE
STATE BAR OF GEORGIA

IN THE MATTER OF:	)	CIVIL ACTION
BOBBY G. BEAZLEY	)	FILE NO. ___

ORDER*

The foregoing Petition of the State Bar of Georgia read and considered.

The Respondent, BOBBY G. BEAZLEY, having on June 22, 1978, formally and under oath, resigned from the legal profession and the practice of law, and such resignation having been accepted by the State Bar of Georgia;

IT IS CONSIDERED, ORDERED AND ADJUDGED, that his name be stricken as a member of the legal profession in the State of Georgia.

SO ORDERED, this 26th day of June, 1978.

/s/ John N. Hardin
SENIOR JUDGE
AUGUSTA JUDICIAL
CIRCUIT

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*The exact filing dates in the district court of the Richmod County Superior Court's illegal order of removal and of the same courts order setting same aside will be verified by the civil docket sheet below.

EXHIBIT A

Filed in office this 26th day of
June, 1978
Vivian R. Martin
Deputy Clerk

APPENDIX G

SUPERIOR COURT CLERK'S OFFICE

RICHMOND COUNTY NO. ORDER

I, LUCILLE V. BOYD, DEPUTY CLERK OF THE SUPERIOR COURT OF RICHMOND COUNTY, GEORGIA, HEREBY CERTIFY THAT THE FOREGOING IS A TRUE COPY OF THE ORIGINAL OF FILE AND OF RECORD IN THIS OFFICE IN RE: BOBBY GAY BEAZLEY

WITNESS MY SIGNATURE AND THE SEAL OF SAID COURT HERETO AFFIXED AT AUGUSTA, GEORGIA, THIS 2ND DAY OF OCTOBER, 1989.

/s/ Lucille V. Boyd
DEPUTY CLERK

[SEAL]

APPENDIX H

IN THE SUPERIOR COURT OF RICHMOND COUNTY
STATE OF GEORGIA

IN RE: BOBBY GAY BEAZLEY)
)
)

ORDER

[All references herein to "exhibits" are to the exhibits attached to the February 28, 1986 Objection of the State Bar of Georgia to Motion to Set Aside, unless otherwise noted.]

FINDINGS OF FACT

On June 22, 1978, movant, an attorney licensed to practice law in the State of Georgia, sent a 34-page document to the State Bar of Georgia entitled Report To The State Bar ("Report") (See Exhibit A). In addition to allegations of political corruption, mafia activities, and a communist conspiracy to overthrow the government of the United States of America, movant stated therein as follows:

> . . . considering all factors . . . I respectfully submit that except for finding counsel to take over [my pending cases] I am resigning from the legal profession and the practice of law; . . . (Report at page 34.)

Upon receipt of said Report, the State Bar of Georgia ("State Bar") sent a copy of the Report together with a document it drafted entitled Petition For Voluntary Withdrawal From The Practice of Law In The State of Georgia ("Petition") (See Exhibit C) to the Honorable Edwin D. Fulcher, Superior Court Judge of the Augusta Judicial Circuit. Said Petition recited that pursuant to the movant's Report and his voluntary resignation therein, the State Bar had stricken his name from its membership rolls and prayed that the court issue an order likewise striking his name from membership in the State Bar of Georgia.

Although the State Bar maintains that a copy of this Petition was sent to the movant (see Exhibit B), the movant denies ever having received it (See Affidavit of Bobby G. Beazley attached to Movant's Response Brief). Without a formal hearing, the Honorable John F. Hardin, Senior Judge of the Augusta Judicial Circuit, signed an order dated June 26, 1978 striking movant's name as a member of the legal profession in the State of Georgia (See Exhibit C). Thus despite the fact that no disciplinary proceedings had been brought against him, movant was thereafter prohibited from practicing law.

On July 3, 1978, movant filed with the Supreme Court of Georgia his "extraordinary appeal" of the June 26, 1978 order (See Exhibit D-2). That appeal was denied without opinion on August 31, 1978 (See Exhibit D-1).

Thereafter, movant sought to regain his right to practice law in almost every conceivable forum, both state and federal. The State Bar was named as a defendant in several of these unsuccessful endeavors. This Court will

not attempt to relate further the procedural history of this bizarre case. Suffice it to say that the movant, having not yet achieved his desired goal, now seeks to set aside the June 26, 1978 order in the court of its rendition, the Superior Court of Richmond County. All judges of that court having recused themselves, the formidable task of sorting out this case has befallen this judge designate.

CONCLUSIONS OF LAW

Pursuant to O.C.G.A. §9-11-60(d), movant seeks to set aside the June 26, 1978 order on two grounds: (1) lack of subject matter jurisdiction and (2) lack of personal jurisdiction. For the reasons stated below, this Court agrees that the Superior Court of Richmond County lacked both jurisdiction over the person and of the subject matter at the time the June 26, 1978 order was signed by Judge Hardin.

I. SUBJECT MATTER JURISDICTION

In *Carpenter v. State*, 250 Ga. 177 (1982), the Supreme Court of Georgia held that:

> Matters relating to the practice of law, including the admission of practitioners, their discipline, suspension, and removal, are within the inherent and exclusive power of the Supreme Court of Georgia. *Id.* at 177.

The *Carpenter* decision firmly established that the authority to discipline, suspend, disbar or otherwise remove attorneys once admitted to practice law rests exclusively with the Supreme Court of Georgia. Any attempt by the Legislature to confer that power upon inferior courts

would be unconstitutional as violative of the separation of powers.

In aid of its exclusive jurisdiction, the Supreme Court adopted Rules and Regulations for the Organization and Government of the State Bar of Georgia ("Rules"). (See 219 Ga. 873.) The Rules, as amended, existing at the time of the June 26, 1978 order are set out in 238 Ga. 739-853. Procedures are established therein for the disbarment of attorneys.

A judgment rendered by a court without jurisdiction of the subject matter is absolutely void. *Williams v. Fuller*, 244 Ga. 846, 848 (1979). In order for the June 26, 1978 order to be valid, some basis for the issuing court's jurisdiction must be shown. The question therefore is from what source did the Superior Court of Richmond County derive its authority to strike the movant's name from the legal profession in the State of Georgia?

The State Bar claims that it transmitted the movant's Report and its Petition to the Superior Court of Richmond County pursuant to Ga. Code Ann. §9-501, the same statute held unconstitutional in *Carpenter*, supra. The State Bar maintains, however, that it looked only to the procedural provisions of §9-501, and not its substantive provisions. Because §9-501 established the superior court of the county of an attorney's residence as the proper venue for removal actions, the State Bar determined that such court was also the correct venue for acceptance of an attorney's resignation. (Transcript of January 30, 1986 hearing at 9, 23). The proper venue for the acceptance of an attorney's resignation provision authorizing the acceptance of an attorney's resignation in the first place. The

State Bar admits that it can cite no precedent for the mere acceptance of an attorney's voluntary resignation (Transcript January 30, 1986 hearing at 30). Obviously, *Carpenter*, supra, precludes the possibility that such authority might have been conferred by statute. Therefore, it must have been delegated by the Supreme Court in its Rules, if at all. This Court, however, can find no authority in the Rules which would have permitted the Superior Court of Richmond County to simply accept the movant's voluntary resignation, purportedly the intent of movant's 34-page Report.

The only instance found by this Court which would empower a superior court to remove an attorney is pursuant to Standard 66 (removal of an attorney convicted of a crime). Moreover, the only situation in which the rules permit a voluntary surrender of one's license is pursuant to a disciplinary proceeding following an admission by the attorney of conduct in violation of established disciplinary standards. Rule 4-203(i). Movant herein was neither convicted of a crime nor subjected to disciplinary proceedings.

Notwithstanding the Richmond County Superior Court's apparent lack of subject matter jurisdiction, it is contended that the Supreme Court of Georgia adopted the June 26, 1978 order, i.e., exercised its exclusive jurisdiction, when it denied movant's "extraordinary appeal" from said order. This Court does not agree. Movant contends, and the State Bar does not refute, that movant did not file a notice of appeal prior to submitting his "extraordinary appeal" to the Supreme Court. The proper and timely filing of a notice of appeal is an absolute prerequisite to confer jurisdiction upon the appellate

court. *Hester v. State*, 242 Ga. 173, 175 (1978). The failure to file a notice of appeal is one of the statutory grounds for dismissal of an appeal. *Littlejohn v. Tower Associates, Ltd.*, 163 Ga. App. 37, 38 (1982); O.C.G.A. §5-6-48(b)(1).

This Court will presume that the Supreme Court would not have considered the merits of movant's appeal in the absence of a properly filed notice of appeal. Consequently, this Court rejects any notion that the Supreme Court adopted the June 26, 1978 order as its own. This conclusion is supported by the language of a later Supreme Court decision discussed in Part IV, infra.

II. PERSONAL JURISDICTION

In the absence of service process or the waiver thereof, no jurisdiction over the defendant is obtained by the court and any judgment adverse to the defendant is absolutely void. *DeJarnette Supply Co. v. F.P. Plaza*, 229 Ga. 625(4) (1972). Notice and opportunity to be heard is the very bedrock of due process. *Lester v. Croombs*, 157 Ga. App. 377, 378 (1981). The right to practice law, after once admitted is to be considered a valuable property right, of which one is not to be deprived without notice and a right to be heard. *James v. State*, 61 Ga. App. 860, 863 (1940).

Movant claims that he received no notice nor opportunity to be heard prior to the issuance of the June 26, 1978 order. Although the State Bar maintains that it sent movant a copy of the Petition, this Court finds such insufficient to meet due process requirements for several reasons. One, movant apparently never received it. Movant's affidavit overcomes the presumption of receipt.

Henson v. State, 168 Ga. App. 210 (1983). Moreover, in sending the copy by regular mail, the State Bar failed to select a method of service reasonably calculated to put movant on notice. Two, even if movant had received said copy, it would have been received at best only one or two days prior to the date on which the order was signed. This does not constitute sufficient advance notice especially when no hearing date was set and no hearing held. And finally, if the State Bar relied on §9-501 to determine the appropriate venue for its Petition, then the Superior Court of Richmond County, upon receipt of the Petition, should have been bound by the procedural mandate of §9-509 to provide the movant with personal service of a copy of said Petition and notice of a hearing date thereon. Ga. Code Ann. §9-509; *Garland v. State*, 110 Ga. App. 756, 759 (1964). This would be true even though this was not strictly speaking an action to disbar, because it was nonetheless an action in the nature of disbarment. *Bradley v. Simpson*, 59 Ga. App. 844, 845 (1939). Note in this regard that a voluntary surrender of one's license has been held to be the equivalent of disbarment. *Carpenter*, supra at 178.

Furthermore, this Court rejects the contention that movant was not entitled to notice because he initiated the resignation process which culminated in the signing of the June 26, 1978 order by Judge Hardin. One, the movant's "resignation" as expressed in his Report was clearly conditioned on his finding substitute counsel to represent his clients in pending cases, a condition which had not yet been satisfied. Two, the movant clearly did not authorize the State Bar to draft and submit its Petition to Judge Hardin.

III. MOTION TO SET ASIDE

A judgment void because of lack of jurisdiction over the person or subject matter may be attacked at any time. O.c.G.A. §9-11-60(f). Although the order sought to be set aside is almost eight years old, a judgment rendered by a court without jurisdiction is a mere nullity, and may be so held wherever and whenever and in whatever way it is sought to be used as a valid judgment. *Fricks v. Fricks*, 215 Ga. 137, 139 (1959); *Strickland v. Willingham*, 49 Ga. App. 355, 357-358 (1934). Laches and similar equitable defenses, which are peculiarly applicable to equitable suits, have no relevancy to the suit at bar involving a motion to set aside a judgment upon a legal ground. *Power v. Mobley*, 170 Ga. App. 167, 168 (1984); *Moore v. American Finance System*, 236 Ga. 610, 611 (1976).

IV. RES JUDICATA

The last issue to be addressed is whether or not any of the decisions rendered heretofore will operate as res judicata to this Court's reconsideration of the validity of the June 26, 1978 order. For the reasons stated below, this Court finds that res judicata is inapplicable to movant's motion to set aside.

In order for the doctrine of res judicata to apply, there are three prerequisites to which the situation must conform. They are: (1) identity of parties; (2) identity of cause of action, and (3) prior adjudication by a court of competent jurisdiction. *Firestone Tire & Rubber Co. V. Pinyan*, 155 Ga. App. 343, 345 (1980). One additional statutory requirement is that the prior adjudication must have been based on the merits of the cause of action alleged.

O.C.G.A. §9-12-42. This Court will now address each of the proceedings which have heretofore addressed the validity of the June 26, 1978 order in light of the foregoing res judicata prerequisites.

(1) The June 26, 1978 order itself cannot operate as a bar to this Court's reconsideration of its validity. A judgment which is void for the want of jurisdiction does not afford any basis for applying the doctrine of res judicata. *Eagan v. First Nat. Bank, 212 Ga. 212, 213* (1956).

(2) The August 31, 1978 denial by the Supreme Court of Georgia of movant's "extraordinary appeal" was entered without opinion. It is therefore a matter of speculation as to whether or not the merits of the appeal were addressed. Where a judgment creates doubt as to what issues were actually decided and leaves as a matter of conjecture the basis for such judgment, the judgment is not an estoppel. *Cravey v. Druggist's Co-Operative*, 66 Ga. App. 908, 914 (1942). Moreover, there is good reason to believe that the merits were not reached (see discussion in Part I., supra.).

(3) The movant brought suits against the State Bar in both the Superior Court of Fulton County (See Exhibit E-1) and the United States District Court for the Southern District of Georgia (See Exhibit F-1). In those suits the movant alleged, *inter alia*, that the State Bar had wrongfully removed movant from its membership and was unlawfully withholding movant's license to practice law. Movant sought damages and equitable relief. The validity of the June 26, 1978 order was raised in each suit although movant did not specifically seek to have that order set aside.

On October 20, 1980, the Fulton Superior Court granted summary judgment to the State Bar but the order did not specify the reasons therefor. (See Exhibit E-3). A transcript of the proceedings, however, indicates that the court believed the Supreme Court's denial of movant's "extraordinary appeal" was res judicata. That court also indicated that it believed that the movant stated no cause of action, i.e., that the State Bar had no authority to re-admit him. (Fulton Superior Court hearing transcript at 11, 12 and 18). This decision was affirmed on appeal.

On March 14, 1983, the Southern District Court granted summary judgment to the State Bar in a written order which cited the Fulton County decision as res judicata to its reconsideration of the issues (See Exhibit F-19). This decision was also affirmed on appeal.

The principles of res judicata apply to questions of jurisdiction as well as to other issues, and where the jurisdiction of the court is challenged, and the question is contested and decided, a judgment of the court, unless reversed or set aside, is generally held as conclusive on the parties in subsequent litigation. 50 C.J.S. Judgments, §714. Therefore, this Court finds that res judicata bars any subsequent suit between the movant and the State Bar on any cause of action arising from the before mentioned events. See generally, *Bowman v. Bowman*, 215 Ga. 560, 561 (1959).

Nonetheless, this Court finds that neither of these decisions operate as res judicata to its reconsideration here of the validity of the June 26, 1978 order because there is no identity of parties here. Res judicata can only be set up in a subsequent suit between the same parties.

Owens v. Williams, 87 Ga. App. 238, 243 (1952). The case at bar is a motion to set aside an order rendered in an action styled In Re Bobby Gay Beazley. Strictly speaking, the State Bar is not a party to this action. This Court invited the State Bar's participation because of its extensive involvement in the history of this case and the fact that it held certain documents and transcripts from previous litigation not found in the record transmitted to this Court (See letter dated November 13, 1985 from this Court to William P. Smith, III, General Counsel, State Bar of Georgia).

Identity of parties means that those who invoke the defense of res judicata as well as those against whom the defense is invoked must be the same. *A.R. Hudson Realty, Inc. v. Hood*, 151 Ga. App. 778, 779 (1979). This Court finds that the State Bar is not a party which may invoke the defense of res judicata. Moreover, this Court having concluded that res judicata would bar a subsequent suit between the movant and the State Bar, it appears that no res judicata purpose would be served by denying movant's right to bring this motion to set aside.

(4) The Petition for Admission to Bar filed by the movant in the Superior Court of Long County (See Exhibit F), and its denial and subsequent affirmance by the Supreme Court of Georgia (see Exhibit 6) did not address the validity of the June 26, 1978 order and consequently does not operate as res judicata here.

(5) Most telling of the decisions rendered heretofore is the June 20, 1985 decision of the Supreme Court of Georgia (See Exhibit G) responding to movant's petition for mandamus wherein movant sought an order directing

the State Bar to re-issue his license (See Brief of Plaintiff). With the present motion to set aside pending in this Court, and briefs fully reciting all prior decisions affecting the issue (See Exhibit C to Objection of the State Bar of Georgia to Motion to Disqualify), the Supreme Court of Georgia stated as follows:

> This court hereby declines to exercise its original jurisdiction over the instant mandamus petition, [cits], *but does so without prejudice to the petitioner's right to seek relief by way of a motion to set aside in the* appropriate superior court in light of *Carpenter v. State*, 250 Ga. 177 (293 SE2d 16) (1982). (Emphasis added)

If the high court had been of the opinion that its prior decisions operated as a bar to reconsideration of the validity of the June 26, 1978 order, then why would it have added the underlined portion of its decision above?

Accordingly, this Court finds that the June 26, 1978 was rendered by a court having no jurisdiction of the person or the subject matter; that said order is therefore a nullity; that said order is hereby set aside; that movant Bobby G. Beazley is hereby restored to his status as an attorney licensed to practice law in the State of Georgia conditioned only upon his payment to the State Bar of Georgia of whatever dues, or a prorated protion [sic] thereof, are owing for the current year. All persons or agencies involved in the licensing process are ordered to cooperate in effectuating this order.

SO ORDERED this 28 day of May, 1986.

/s/ Thomas W. Ridgway
Thomas W. Ridgway
Chief Judge Superior Courts
Alcovy Judicial Circuit